

**Proposed Amendments to Trial Court Rule III
UNIFORM SMALL CLAIMS RULES**

**Rule 1
SCOPE AND APPLICABILITY OF RULES;
DEFINITIONS**

Pursuant to G.L. c. 218, §§ 21-25, these rules govern procedures in all small claims actions in the Trial Court of the Commonwealth. They shall be construed and applied to secure the just, speedy and inexpensive determination of every small claim action. Other civil rules of court shall not be applicable in small claims actions. ~~The court may, in an individual case prescribe notice requirements at variance with those prescribed in these rules where fairness requires.~~

As used herein, ~~the masculine shall include the feminine, and the singular shall include the plural.~~

In these rules, the following terms shall have the following meanings:

“Clerk” shall mean the Clerk-Magistrate of the division or a person assigned by him or her to perform the required function.

“Court” shall mean the magistrate or judge presiding over the hearing of a small claim action.

“Magistrate” shall mean a clerk-magistrate or assistant clerk-magistrate authorized by G.L. c. 218, §§ 21-23 to hear and determine small claims actions.

“Trade” and “commerce” shall have the same meaning as in G.L. c. 93A, § 1, but shall not include the lease or rental of residential property that is the plaintiff’s primary residence and that consists of three units or less, provided the plaintiff does not own, manage or have other involvement in the lease or rental of other residential property.

“Assigned debt” shall mean a claim or judgment where the right to collect the debt has been assigned by the creditor to another person or entity.

“Plaintiff” in Rules 7 through 10, shall include a defendant with respect to any counterclaim or any claim against a third party brought by him or her, and the word “defendant” shall include a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him or her.

The Chief Justice for Administration and Management shall promulgate forms to be used in small claims actions the Statement of Small Claim form, the Verification of Defendant’s Address form, and the Agreement for Judgment form provided for in these

rules.

Commentary to 2008 Amendments

The authority formerly granted by Rule 1 to vary the notice requirements of these rules has been deleted because of the addition of mandatory address verification requirements in Rule 2(b). The court continues to have authority under Rule 3(a) to vary the manner in which notice is served. The definitions of "trade" and "commerce" and of "assigned debt" were added to implement the new address verification and pleading requirements of Rule 2(b). The definitions of "trade" and "commerce" refer to the Consumer Protection Act, G.L. c. 93A, but contain an exclusion for rentals of landlord-occupied multiple dwellings of three units or less. Case law further defining trade or commerce in the context of c. 93A cases is intended to be applicable here.

Commentary to 2001 Amendments

Most of these amendments are proposed to conform the Uniform Small Claims Rules to the statutory changes enacted by St. 1992, c. 379. The reasons for other proposed changes are noted under each rule.

The former second paragraph of Rule 1 has been rendered unnecessary by the passage of time since the 1983 promulgation of the Uniform Small Claims Rules.

The newly-added definition of "magistrate" reflects the statutory change contained in St. 1992, c. 379 and intends that small claims matters generally be heard in the first instance by a clerk-magistrate or an assistant clerk-magistrate. No magistrate who is not qualified by education or training should preside over small claims since these matters are to be determined "according to the rules of substantive law." G.L. c. 218, §21. The Trial Court will provide training pursuant to criteria approved by the Chief Justice for Administration and Management.

The newly-added definitions of "plaintiff" and "defendant" reflect the holdings of *Most v. Fitzgerald*, 417 Mass. 1001 (1994), and *Bischof v. Kern*, 33 Mass. App. Ct. 45 (1992), that small claims plaintiffs may appeal from an adverse decision on a counterclaim brought by the defendant. The addition of these definitions permits simple, consistent use of the terms "plaintiff" and "defendant" throughout these rules.

Rule 2

FILING A STATEMENT OF CLAIM

(a) Statement of Claim. Each small claim action shall be begun on a Statement of Small Claim ~~and Notice of Trial~~ form. The claim shall be stated in concise, untechnical language, but with particularity and comprehensiveness. A statement shall not be insufficient merely because the plaintiff has failed to allege all the elements of a prima facie case. The plaintiff shall state separately any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, and for costs, as well as the total amount being sought, exclusive of any prejudgment interest being sought from the court pursuant to G.L. c. 231, §§ 6B or 6C. If requested by the plaintiff or if otherwise feasible and appropriate to facilitate the filing of a legible and complete claim that conforms to the requirements of this rule, the clerk shall provide assistance to the plaintiff in completing the form. The clerk shall provide necessary and helpful procedural information to small claim litigants if requested.

(b) Additional Requirements for plaintiffs in trade or commerce or pursuing

assigned debt. Any plaintiff pursuing a claim incurred in the course of plaintiff's trade or commerce, or pursuing a claim for assigned debt, shall file along with the Statement of Small Claim form the Verification of Defendant's Address form, certifying that he or she has verified the defendant's address in the manner set forth therein. The form need not be served on the defendant.

Any such plaintiff shall include the following information in the description of claim in the Statement of Small Claim form:

- (1) The name of the original creditor (if different from plaintiff's);
- (2) The last four digits of the account number assigned by the original creditor, if any; and
- (3) The amount and date of the defendant's last payment, if any.

If the plaintiff fails to comply with this section and the defendant does not appear at the scheduled trial, no default judgment shall be entered for the plaintiff and the claim shall be dismissed without prejudice.

(c) **Filing with the Clerk.** A claim may be filed in person or by mail. In either case, except where waived by the clerk of the court under the Indigent Court Costs Law (G.L. c. 261, §§ 27A-29), the claim shall be accompanied by the entry fee required by G.L. c. 218, § 22 and the surcharge required by G.L. c. 262, § 4C. The clerk shall provide a copy of the Statement of Small Claim and Notice form to the plaintiff ~~upon~~ immediately after filing, which copy shall show the date and time of trial. The date the Statement of Small Claim and Notice form is filed shall constitute the date of commencement of the claim.

Commentary to 2008 Amendments

Section (a) has been amended to require the plaintiff to state separately any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, and for costs, as well as the total amount sought, exclusive of any statutory prejudgment interest. This provides the defendant with a breakdown of the amount being claimed and assists the court in determining the amount of any award. Such a breakdown of the elements of the plaintiff's claim is already required in regular civil cases by Dist./Mun. Cts. Supp. R. Civ. P. 106(B).

Section (b) introduces two additional requirements for plaintiffs in trade or commerce or pursuing assigned debt. Such plaintiffs must verify the defendant's current address in one of several specified ways and certify this when filing the Statement of Small Claim. This enhanced filing requirement is intended to increase the likelihood that the defendant will receive notice of the claim when it is mailed.

Such plaintiffs must also provide three items of basic information which will help the defendant to identify the debt that is the basis of the claim. Such information may be particularly important when the plaintiff is an assignee rather than the original creditor. For privacy reasons, only the last four digits of the original creditor's account number are to be given.

If the defendant fails to appear for trial, the plaintiff's failure to comply with this section will result in denial of a default judgment and in dismissal of the claim without prejudice.

Commentary to 2001 Amendments

The change in the first paragraph is intended to encourage court personnel to provide procedural information and to assist claimants in the preparation of forms.

Rule 3 NOTICE TO DEFENDANT; ANSWER TO CLAIM

(a) **Notice.** The clerk shall promptly send to the defendant by first class mail, at the address or addresses supplied by the plaintiff, a copy of the Statement of Small Claim ~~and Notice~~ form. Such first class mail notice shall be sufficient, provided that it is not returned to the court undelivered. Service on out-of-state defendants shall be made pursuant to the provisions of G.L. c. 223A. The court may provide for any other means of service in individual cases as is deemed necessary.

(b) **Answer.** The Statement of Small Claim form shall instruct the defendant ~~shall be instructed~~ that he or she may, if he or she wishes, submit a written answer to the claim in the form of a letter to the court, with a copy mailed to the plaintiff, signed by the defendant and setting out in clear and simple language the reason(s) why the plaintiff should not prevail. The answer should state fully and specifically what parts of the claim are contested. However, the filing of an answer is optional, and the failure to file an answer ~~will~~ shall not result in the defendant's default. If the defendant's failure to submit a written answer, or to send a copy of it to the plaintiff in a timely manner, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(c) **Defendant's Counterclaim.** In the answer, or in a separate writing filed with the court, the defendant may set forth any claim which he or she has against the plaintiff within the jurisdiction of the court in small claims cases, without incurring any filing fee or surcharge. Both the plaintiff's claim and the defendant's claim shall be deemed one case if the defendant mails notice of his claim to the plaintiff at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. Such claims shall not be compulsory. No written answer to the defendant's claim is required. If the defendant's presentation of a counterclaim, or failure to send timely notice to the plaintiff, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(d) **Third-Party Practice.** The defendant may bring a claim against any third party who may be liable to him or her for all or part of the plaintiff's claim if the defendant's claim is within the jurisdiction of the court in small claims cases and notice is mailed to the third party in the manner provided in Rule 2 at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. There shall be no filing fee or surcharge for such a claim. When a counterclaim is asserted against the plaintiff, he or she may bring a claim against a third party in the same manner.

Commentary to 2004 Amendments

The change to paragraph (a) reflects the amendment of G.L. c. 218, § 22 by St. 2004, c. 149, § 199. This amendment abolishes the earlier statutory requirement of notice by registered mail. Notice by first class mail is now sufficient.

Commentary to 2001 Amendments

The change to paragraph (a) codifies the holding of *Schreiber v. Hoyusgaard*, 1989 Mass. App. Div. 138 (S. Dist.), that in the case of an out-of-state defendant the service provisions of the long-arm statute (G.L. c. 223A, § 6) prevail over those in this rule. The practical significance of this change is that mail service on an out-of-state defendant is valid only if there is a signed receipt for the certified mail.

The procedure embodied in the proposed amendment to paragraph (b) would give plaintiffs a guarantee of protection from surprise defenses, but it would not require an answer to be filed in all cases. The amendment to paragraph (c) would also protect plaintiffs from surprise.

Rule 4 TRANSFER

(a) **To Regular Civil Docket.** The court may, upon request of a party or upon its own motion, transfer a claim or counterclaim begun under the small claims procedure to the regular civil docket pursuant to G.L. c. 218, § 24. Any such request shall be made prior to the date when trial is scheduled before a magistrate. If the court orders such a transfer: (i) the claim shall be entered on the court's regular docket for hearing and determination as though it had been begun under the Massachusetts Rules of Civil Procedure, but no entry fee shall be charged upon such transfer; (ii) the defendant shall serve and file an answer to the plaintiff's claim within twenty days of the date of such transfer, if the defendant has not already done so in the small claims action; (iii) in the order of transfer or thereafter the court may direct any party to file specific additional or substitute pleadings pursuant to the Massachusetts Rules of Civil Procedure; and, (iv) the court may impose any terms upon the transfer as the interests of justice may require.

(b) **To Housing Court under c. 185C.** Any small claims action within the jurisdiction of the Housing Court Department may be transferred to the Housing Court Department pursuant to G.L. c. 185C, § 20 by filing a notice of removal with the clerk of the division where such action is pending, and serving a copy thereof on the other parties. The clerk shall thereupon transfer such action to the Housing Court Department, where it shall be entered on the regular small claims docket. Thereafter, the court may, upon request of a party or upon its own motion, transfer a claim or counterclaim to the regular civil docket pursuant to G.L. c. 218, § 24, but no entry fee shall be charged upon such transfer.

(c) **To Medical Malpractice Tribunal.** Prior to trial by a magistrate, any small claims action for malpractice, error or mistake against a provider of health care shall be referred for the convening of a medical malpractice tribunal pursuant to G.L. c. 231, § 60B.

Commentary to 2008 Amendments

The change to paragraph (a) clarifies that any party seeking to transfer a small claim action must do so prior to the day of trial before the magistrate, thereby avoiding any undue inconvenience to the non-moving party.

Commentary to 2004 Amendment

The addition to paragraph (a) clarifies that any request to transfer a small claim to the regular civil docket must be made prior to the initial trial and may not be made for the first time when an appeal is pending for trial before a judge or jury.

Commentary to 2001 Amendments

The change to paragraph (a) clarifies that when a small claim is transferred to the regular civil docket the defendant must file an answer within twenty days, if no answer was previously filed in the small claim. This eliminates the present uncertainty as to the next procedural step where no answer has been filed in such transferred cases. The court is also authorized to require additional or substitute pleadings where appropriate to clarify the issues in the transferred case — for example, requiring the plaintiff to file a formal complaint or an answer to a defendant's counterclaim. The former generalized reference to the "civil rules of court applicable to the department in which the case is pending" is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

The change to paragraph (b) clarifies that removal of a small claims action to the Housing Court Department under G.L. c. 185C, § 20 is a matter of right, requiring only a notice of removal, and not a motion that involves any exercise of discretion by the court from which the small claim is being removed.

Paragraph (c) has been added as a reminder to litigants and court personnel that occasionally medical malpractice claims (usually in the form of billing disputes) are brought as small claims, and they remain subject to the statutory procedures in G.L. c. 231, § 60B. Administrative arrangements for such medical malpractice tribunals are currently made through the Superior Court's administrative office.

Rule 5 AMENDMENTS AND DISCOVERY

The court may at any time allow any claim or answer to be amended as justice may require. No discovery shall be allowed except upon good cause shown. Service of witness summonses shall be in accordance with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the "civil rules of court applicable to the department in which the case is pending" is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

Rule 6 ATTACHMENTS

Pre-trial attachment shall not be permitted. Post-trial attachment shall be in accordance with applicable statutory provisions and with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the "civil rules of court applicable to the department in which

the case is pending” is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

Rule 7 TRIALS AND JUDGMENTS

(a) **Agreement for Judgment.** The parties may at any time file with the court, in person or by mail, an agreement for judgment, ~~or an agreed-upon payment order, or both~~ which may include an agreement for a payment order, on the Agreement for Judgment form promulgated by the court. The clerk shall not accept for filing, and the court shall not approve, any agreement for judgment or for a payment order that is not set out on such form. ~~Unless justice would not be served thereby, the court shall enter such agreement as the judgment or order of the court and notify the parties in writing that it has done so.~~

~~If such an agreement for judgment~~ the Agreement for Judgment form is filed prior to the scheduled trial date, neither party need appear on the scheduled trial date unless directed otherwise by the court.

If the Agreement for Judgment form is proffered when the parties are present, the court shall review the agreement and, if it includes a payment order, inquire of the defendant to ascertain that he or she is able to pay the payment order and understands the consequences of not complying with the payment order.

Unless justice would not be served thereby, the court shall enter such agreement as the judgment ~~or~~ and payment order of the court and notify the parties in writing that it has done so. The court shall not enter a payment order or otherwise approve any payment agreement that relies on exempt sources of income.

(b) **Continuances.** Where the defendant has been given notice as provided in these rules, trial shall not be continued to another date unless by agreement of the parties with the approval of the court, or unless there is a showing of good cause. Any motion for continuance shall be in writing unless the court permits an oral application. Except as provided in Rule 3(b), the defendant's appearing ready for trial and requiring the plaintiff to prove his or her case is not good cause for a continuance.

(c) **Plaintiff's Failure of a Party to Appear for or Proceed to Trial.** ~~If the plaintiff fails to appear for trial and the defendant does appear, the claim shall be dismissed. If the defendant fails to appear for trial and the plaintiff does appear, the court may render judgment for the plaintiff and make an order for payment to the plaintiff. If the defendant appears for trial on the scheduled trial date and the plaintiff fails to appear or is not prepared to proceed to trial, judgment shall be entered for the defendant. If neither the plaintiff nor the defendant appears for trial, the claim a judgment of dismissal shall be dismissed entered.~~

(d) **Defendant's Failure to Appear for Trial.** If the plaintiff appears for trial and

the defendant fails to appear, the court may render judgment for the plaintiff and make an order for payment to the plaintiff. Prior to entering such judgment the court shall review the Statement of Small Claim to determine whether further inquiry or an assessment of damages is required. Normally these should be done on the scheduled trial date. The court shall examine any of the following circumstances:

(1) *Uncertain Jurisdiction.* If the court's subject matter jurisdiction or personal jurisdiction is uncertain, the court shall inquire into the matter.

(2) *Uncertain Claim.* If the facts alleged, taken as true, do not appear to constitute a claim on which relief may be granted, the court shall inquire into the matter.

(3) *Uncertain Liability.* If the facts alleged, taken as true, do not establish each essential element of a claim, the court shall inquire into the matter and may elicit additional facts to determine if such element or elements are established.

(4) *Uncertain Damages.* If the Statement of Small Claim requests damages that are not a sum certain or a sum which can by computation be made certain, the court shall conduct an assessment of damages. The court shall inquire into any amounts sought which do not appear to be supported by the facts as alleged.

(5) *Discretionary Awards.* If the law requires an exercise of discretion in awarding multiple damages, a statutory penalty, or discretionary attorney's fees or court costs, the court shall inquire into the matter and exercise such discretion.

(6) *When Review for Reasonableness Required.* The court shall review any amounts that the law requires be examined for reasonableness, such as contractual attorney's fees or collection costs. In such matters, the court's function is not to substitute its own discretion for the parties' agreement, but to avoid court enforcement of a clearly unjust result.

(7) *Inconclusive Military Affidavit.* If the plaintiff is unable to file the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., stating that the defaulting defendant is not in military service and showing necessary facts to support the affidavit, the court shall inquire into the matter. If it appears that the defendant is in military service, the court shall not enter any default judgment without first appointing an attorney for the defendant, and under certain circumstances staying the entry of any default judgment, as required by the Act. If the court cannot determine from the affidavit whether the defendant is in military service, the court may exercise the discretion granted by the Act to require an indemnity bond, to stay execution, or to make such other orders as the court deems necessary to protect the rights of the defendant.

(8) *Plaintiff in trade or commerce or pursuing assigned debt.* Where the claim involves a plaintiff in trade or commerce or pursuing assigned debt and the plaintiff has not complied with Rule 2(b), the court shall not enter a default judgment for the plaintiff, and shall dismiss the claim without prejudice.

(e) Appearance of Counsel. An attorney who is not current counsel of record for a party shall not appear in court to answer for that party until he or she has filed with the court a written notice of appearance. An appearance may be time-limited and may indicate that the attorney is appearing as substitute counsel solely for that day's proceedings. Any notice of appearance shall be entered on the docket and filed with the case papers. The clerk need not notify counsel who has filed a time-limited appearance of any future events or proceedings in that case.

(d f) Trial. A small claim action shall generally be tried, and pretrial and post-judgment motions relating to such trials shall generally be determined, by a magistrate. Judges may hear such matters when deemed necessary by the court, provided that the defendant has first acknowledged in writing that, by electing to proceed with an initial trial by a judge, the defendant will waive the right to appeal for a subsequent trial by a judge or before a jury. Magistrate hearings shall be conducted in a courtroom, if one is available, and if not, in an area of the courthouse which is open and available to the public. Whenever possible, a court officer shall be in attendance. A magistrate shall sit at the clerk-magistrate's bench and not at the judge's bench, and shall not wear a robe. At the beginning of the small claims session, a magistrate shall identify himself or herself as such to those present. A magistrate who has acted as a mediator pursuant to Uniform Magistrate Rule 4 shall not thereafter rule on any motion, nor preside over any trial or enforcement proceeding, in the same small claim.

(e g) Conduct of Trials. All small claim proceedings shall be recorded in accordance with applicable rules of court. The parties and witnesses testifying shall be sworn. The court shall conduct the trial in such order and form and with such methods of proof as it deems best suited to discover the facts and do justice in the case. The participation by attorneys representing parties may be limited in a manner consistent with the simple and informal adjudication of the controversy. Non-attorneys shall be allowed to assist parties in the presentation or defense of their cases when, in the judgment of the court, such assistance would facilitate the presentation or defense. When an oral motion has been made, the clerk shall note in the docket any action taken on the motion.

(f h) Judgments. Judgment shall be entered forthwith upon the decision of the court. The date of judgment shall be the date the judgment is entered in the docket. The clerk shall promptly complete and send to each party by first class mail the Notice of Judgment and Order form.

(g i) Payment Hearing and Orders to Pay. If the decision of the court is for the plaintiff, the court shall, except where justice will not be served thereby, also order payment to the plaintiff, or to the court on behalf of the plaintiff, of the amount of the judgment and costs, as the case may be, on or by a date stated or in specified installments. If the defendant has appeared and is before the court at the time of decision and if the defendant does not pay the amount of the judgment and costs or agree to a payment schedule acceptable to the plaintiff, the court shall conduct a payment hearing, including requiring the defendant to complete a written financial statement signed under the penalties of perjury. The financial statement shall be kept

separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. If the defendant is not before the court at the time of decision or the defendant has not appeared, the order shall be for the full amount of the judgment and costs, payable in full in thirty days, unless the court orders otherwise. The provisions of an order to pay shall be stated on the Notice of Judgment and Order form. Unless a payment hearing is waived by the plaintiff, the court shall also schedule the matter for a payment hearing thirty days from the date of judgment or shortly thereafter. The Notice of Judgment and Order form shall advise the parties that, unless the defendant timely appeals from the judgment or makes payment as ordered, the defendant is required to complete a written financial statement under the penalties of perjury, to provide the plaintiff with a copy of the statement prior to the payment hearing, and to appear in court on that date ~~if payment has not been made as ordered~~. The Notice shall further state that any such financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. The Notice shall further state that if the defendant fails to appear on that date and the plaintiff does appear and states under oath or in writing under the penalties of perjury that payment has not been made as ordered, the court may immediately issue a writ of attachment to bring the defendant before the court without the need for prior service of an Order to Show Cause pursuant to Rule 9(a). The Notice of Judgment and Order form shall also advise the parties that they are not required to appear in court on that date if payment has been made as ordered. Following the payment hearing the court may amend its previous order to pay or issue a new order.

(h j) **Costs.** If the decision of the court is for the plaintiff, the plaintiff's actual cash disbursements for the entry fee and surcharge shall be allowed as costs. Witness fees and other costs shall be allowed only by special order of court. The court may, in its discretion, award additional costs in a sum not exceeding one hundred dollars against any party who has set up a frivolous or misleading claim or answer, or has otherwise sought to hamper a speedy and fair determination of the claim. The court may at any time amend the judgment to add the cost of service of any post-judgment process that was necessary to enforce the judgment.

(† k) **Execution.** Execution shall issue to the plaintiff upon written request after the payment hearing, or if no payment hearing is scheduled, thirty fifteen business days of the date after the entry of judgment. Execution shall be in accordance with the statutory requirements for execution on civil judgments generally; provided, however, that execution shall in no way affect the procedure for enforcement of judgments under Rule 9 of these rules, except that double satisfaction of judgments shall not be allowed.

Commentary to 2008 Amendments

New paragraph (a) requires use of the official Agreement for Judgment form, which includes the list of statutory exemptions. This insures that the court does not order or otherwise endorse any private payment agreement that relies on exempt sources of income. General Laws c. 224, § 16 (made applicable to small claims by G.L. c. 218, § 22) prohibits the court from ordering a defendant to make any payment from exempt income. Likewise it is not appropriate for the court to endorse any voluntary

payment agreement that relies on exempt sources of income.

Paragraph (d) now lists specific matters that must be considered by the magistrate before a default judgment may be entered, in order to determine legal liability, correctly calculate an award, and avoid any misuse of the small claims court. These are obligations that are entirely consistent with the magistrate's obligation in an adversarial proceeding to maintain his or her neutrality and include the following:

(d)(1) Uncertain Jurisdiction. When the court's jurisdiction is questionable (e.g., a claim that appears to fall under the Massachusetts Tort Claims Act), then the matter must be reviewed by a magistrate for a determination as to whether jurisdiction exists.

(d)(2) Uncertain Claim. By defaulting, a defendant admits the facts alleged in the Statement of Small Claim, but does not admit legal liability. If there is uncertainty, the magistrate must determine whether the Statement of Small Claim sets forth a recognizable cause of action on which relief may be granted.

(d)(3) Uncertain Liability. If the facts alleged do not include all essential elements of the claim, then a magistrate must elicit these additional facts before a default judgment may enter. Since a defaulting defendant is deemed to have admitted the facts set forth in the Statement of Small Claim, the magistrate may not require the plaintiff to offer evidence of a prima facie case, except as to any element of the claim that is not covered by the facts set forth in the statement. A default judgment may enter only if the facts alleged in the Statement of Small Claim and any additional facts elicited and established by evidence provide a prima facie case on a recognized claim for which relief may be granted. This does not require the magistrate to raise potential matters of defense not raised by the defendant. There are differing views as to the appropriateness of doing so, given the tension between the special nature of small claim proceedings and the magistrate's ethical obligations to maintain his or her neutrality.

(d)(4) Uncertain damages. A magistrate must conduct an assessment of damages whenever the Statement of Small Claim requests damages that are not a sum certain or in instances where the amount claimed appears to be inflated or unrelated to the claim.

(d)(5) Discretionary awards. A small claim must be reviewed by a magistrate whenever an exercise of discretion is required in awarding multiple damages (e.g., in G.L. c. 93A consumer protection claims), statutory damages (e.g., for bad checks and shoplifting claims), or discretionary attorney fees or court costs.

(d)(6) Review for reasonableness. Some items that are not considered discretionary must still be reviewed by a magistrate for reasonableness (e.g., contractual attorney fees or collection costs).

(d)(7) Inconclusive military affidavit. Where the plaintiff is unable to file the required affidavit, the court cannot enter a default judgment without further inquiry and compliance with the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.

(d)(8) Plaintiff in trade or commerce or pursuing assigned debt. Before entering a default judgment, the magistrate must review the Statement of Small Claim to determine whether the plaintiff is required to comply with Rule 2(b) and if so whether the plaintiff has properly done so.

When a magistrate must conduct such a review or assessment, normally it should be done on the scheduled trial date.

Paragraph (e) now permits counsel for any party to file a time-limited appearance, thereby acknowledging a common practice in small claim proceedings while permitting the court to maintain an accurate record of all attorneys who appear before the court.

Paragraph (k) now delays the issuance of an execution until after the payment hearing or, if no payment hearing is scheduled, until the expiration of the usual 30-day payment order. This avoids any

unfair surprise to the defendant by delaying any levy on the judgment until the defendant has had an opportunity to pay as ordered or to attend a payment hearing.

Commentary to 2001 Amendments

New paragraph (a) encourages the parties to file agreements for judgment or payment orders whenever they are able to reach such agreement.

New paragraph (d) **[now f]** is necessary to conform this Rule to the intent of the small claims amendments enacted by St. 1992, c. 379 that small claims matters generally be heard in the first instance by a magistrate. The new paragraph recognizes the authority of judges to adjudicate small claims cases in the first instance when needed in a particular court. The language of the paragraph responds to the Supreme Judicial Court's decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607 (2000) which holds that, by proceeding with an initial hearing by a judge, a defendant, including a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him or waives his right to appeal for a subsequent trial by a judge or before a jury. The language also responds to the Supreme Judicial Court's acknowledgment in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, *supra* at 610, that magistrates may determine contested motions in small claims actions, thereby in effect overruling the decision of the Appellate Division of the Boston Municipal Court in *Acentech, Inc. v. Cecconi*, 1994 Mass. App. Div. 44. (Note: On October 25, 2000, the Appeals Court decided *Boat Maintenance & Repair Co. v. Lawton*, 50 Mass. App. Ct. 329, in which that court determined that a clerk-magistrate had no authority to hear and decide a contested motion in a small claim action. However, in so deciding, the Appeals Court did not acknowledge the Supreme Judicial Court's earlier decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, *supra*).

Paragraph (d) **[now f]** also states that magistrates who have mediated a small claim be disqualified from ruling on motions or presiding over any trial on the merits. It also requires recusal from any enforcement proceedings in the same small claim, because it seems inappropriate for one person to exercise both mediation and enforcement functions in the same case, even at different stages of the proceedings. The requirement that a court officer be in attendance whenever possible is strongly recommended by the Trial Court Committee on Small Claims Practices and Procedures. The remaining amendments in paragraphs (d) **[now f]** and (e) **[now g]** codify the procedural directives promulgated in the Policy Statement of Chief Justice for Administration and Management John E. Fenton, Jr., "Policies Regarding Hearing Small Claims under the Court Reorganization Act, Chapter 379 of the Acts of 1992" (February 19, 1993). Those involving the use of a courtroom and an appropriate bench, and involving the recording of proceedings, were also supported by the Trial Court Committee on Small Claims Practices and Procedures.

Paragraph (g) **[now i]** introduces an automatic payment hearing. The Trial Court Committee on Small Claims Practices and Procedures has found that frustration with the current system for collecting judgments is the principal source of citizen dissatisfaction with the small claims process. Presently the burden falls to the prevailing party to initiate collection proceedings and to get the defendant before the court. The new payment hearing mandates a more active role for the courts. As the Committee has noted:

"this streamlined approach to collections would be less costly for the prevailing party because an automatically scheduled hearing would eliminate the need, in the first instance, for service of a Notice to Show Cause. In addition, the parties would more clearly recognize that they have thirty days to work out payment in a non-adversarial manner."

The provisions in Paragraph (g) **[now i]** for the filing of a financial statement also require that any such financial statement is to be protected from public inspection in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court.

The Committee secured the cooperation of three District Courts and one Housing Court and ran

the payment hearing system as described in paragraph (g) **[now i]** on an experimental basis. The results not only supported the Committee's belief that more judgments would be satisfied at an early date with less cost to the plaintiff, but court staff also found that the new procedure was less time consuming for them.

Since no appeal lies from the entry of a default judgment, a defendant against whom a default judgment has been entered must, upon receipt of a Notice of Judgment and Order form, complete a written financial statement, provide a copy of that statement to the plaintiff, and appear in court on the date specified in the Notice and Order form in accordance with the provisions of Rule 7(g) **[now i]** if payment has not been made as ordered.

The amendment to paragraph (h) **[now j]** provides authority for the longstanding practice of requiring the defendant to reimburse the plaintiff for the costs of service of any post-judgment Order to Show Cause or *capias* that is necessary to enforce the judgment.

Rule 8

RELIEF FROM JUDGMENT OR ORDER

Within one year of the date of judgment the court may, upon a party's application and after notice to the other party in such form as the court deems appropriate, vacate or grant relief from any judgment or order, including an order for a judgment of dismissal under Rule 7(b), entered under these Rules ~~for want of actual notice to a party~~, ~~for error~~ or for any ~~other~~ cause that the court may deem sufficient, and may supersede execution.

At any time after judgment, with notice to the other party, a party may apply to vacate or grant relief from any judgment or order, including an order for a judgment of dismissal under Rule 7, if it is alleged that the party did not receive actual notice of the claim and the date of trial. If the court determines that no notice was received, the court shall vacate or grant relief from any judgment or order entered under these rules.

The court may also order the repayment of any amount collected under such judgment or order, and any action by the court may be made conditional upon the performance of any reasonable condition, including payment of or reimbursement for any reasonable expenses incurred by the other party.

Commentary to 2008 Amendment

This amendment requiring relief without regard to the time within which the relief is sought, reflects the due process requirements embodied in Mass. R. Civ. P. 60(b)(4) that a judgment may be challenged and must be voided at any time for lack of notice. See, e.g., *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29, 31 (1983). The one-year limitation applies to all other grounds for relief from judgment.

Commentary to 2001 Amendment

These amendments clarify two ambiguities in the text of Rule 8. The first makes clear that relief from judgment may not be granted on ex parte application. The form, but not the obligation, of giving notice to the other parties is meant to be discretionary with the court. The second makes clear that the court, in vacating an order of dismissal or a default judgment, may, in appropriate circumstances, award reasonable expenses such as lost wages to the other party if the party was present on the day the case

was dismissed or the defendant defaulted.

Rule 9

ENFORCEMENT OF JUDGMENTS

(a) **Order to Show Cause.** On an order issued after the payment hearing, or if there was no payment hearing, upon being informed by the plaintiff that a defendant who has been ordered to pay has failed to obey the order, the clerk shall schedule the matter before the court for enforcement proceedings and shall issue a Notice to Show Cause to the plaintiff, who must arrange for the Notice to Show Cause to be served by an officer duly qualified to serve it. The court may provide for any other means of service in individual cases as is deemed appropriate. The Notice to Show Cause shall indicate the date and time of hearing.

(b) **Enforcement Proceedings.** Upon hearing, the court shall take such action, permitted by law, as it deems appropriate to the end that orders of payment are complied with promptly and satisfaction of the judgment in the case is not frustrated. Such enforcement proceedings may be conducted either by a judge or by a magistrate, but a magistrate shall have no authority to enter an adjudication of civil contempt or to issue an order of incarceration. When enforcement proceedings are conducted by a magistrate and it appears that such action may be required, the magistrate shall refer the matter to a judge, who shall make an independent determination whether to enter an adjudication of civil contempt and may issue an order of incarceration or such other order as may be appropriate to enforce payment of the judgment. If a judge is available at the time of such referral, the matter may immediately be placed before the judge

(c) **Inability to Pay.** Unless the court orders otherwise, a defendant who asserts that he or she is presently unable to pay the amount of the judgment in full shall complete a financial statement on a form provided by the court and signed under the penalties of perjury prior to being examined by the court. The financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case, and to the parties in the case. If the court previously determined that at that time the defendant was financially able to comply with the court's payment order, the burden of proof shall be on the defendant to establish that he or she is currently unable to comply with the court's payment order.

(d) **Defendant's Move to Another District.** If, after ~~judgment has been entered~~ a small claim is filed, the defendant moves out of the judicial district where the action was brought, the court may, on request of the plaintiff, transfer the action to the division of the court in the judicial district to which the defendant has moved. If the court orders such a transfer, the docket entries and the original papers in the case shall be forwarded to said court, without payment of an entry fee, and the case shall proceed in that court as though originally entered therein.

(e) **Acknowledgment of Satisfaction of Judgment.** Within sixty days of full

payment of a judgment, the plaintiff shall file an Acknowledgment of Satisfaction of Judgment with the court.

(f) Court Determination of Satisfaction of Judgment. At the request of the defendant, and upon notice to plaintiff, a judge or magistrate may order the entry of a docket notation indicating full satisfaction of the judgment if the defendant files an affidavit stating that he or she has made full payment of the judgment, and that the plaintiff has been requested to file an acknowledgment of satisfaction of the judgment and refuses to do so, or that the present address of the plaintiff is unknown. The defendant shall accompany such affidavit with canceled checks or money orders for the full amount of the judgment written by the defendant and made payable to and endorsed by the plaintiff, or cash receipts for the full amount of the judgment made out to the defendant and signed by the plaintiff, or other documents demonstrating the plaintiff's receipt of full payment of the judgment. Any such docket notation shall establish a rebuttable presumption of full payment of the judgment.

Commentary to 2008 Amendments

Paragraph (d) now authorizes transfer to the appropriate court when the defendant moves from the original court's geographical jurisdiction, whether before or after judgment.

Paragraph (e) requires for the first time in Massachusetts that the plaintiff file an acknowledgment of satisfaction with the court once a judgment is paid in full. Paragraph (f) provides a remedy to the defendant where plaintiff fails to file an acknowledgment. These additional provisions are necessitated by the difficulty that defendants increasingly experience in proving that a judgment that appears in a credit report was satisfied, sometimes years before.

Commentary to 2001 Amendments

Paragraph (a) is amended to eliminate the directive to the clerk to "make such inquiry into the matter [of non-payment], if any, as he deems useful." Since a clerk may later preside over enforcement proceedings as a magistrate, such informal contacts are best avoided since they might well involve ex parte discussions that would be inconsistent with a magistrate's responsibilities under S.J.C. Rule 3:12, Canon 3.

Paragraph (b) reflects the recommendation of the Trial Court Committee on Small Claims Practices and Procedures that magistrates be authorized to preside over proceedings to enforce small claims judgments, but not to enter adjudications of civil contempt or to make orders of incarceration. When such steps appear necessary, the matter is to be transferred to a judge "immediately," which assumes no need for rescheduling or further notice if a judge is then available.

While it is expected that most proceedings to enforce small claims judgments will be conducted by magistrates, paragraph (b) preserves the authority of judges to preside over such enforcement hearings ab initio.

New paragraph (c) makes it a matter of routine for a defendant who claims to be unable to pay the judgment in full to complete a sworn financial statement. The specific assignment of the burden of proof in paragraph (c) restates current case law. *Roy v. Leventhal*, 5 Mass. App. Ct. 792 (1977). See also G.L. c. 215, § 34 (in Probate Court contempt proceedings, "the defendant shall have the burden of proving his or her inability to comply with the pre-existing order or judgment of which the complaint alleges violation"). The defendant's financial statement shall be treated as confidential information in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court. See Rule 7(g) and the Commentary thereto.

Rule 10 APPEAL

(a) **~~Transmittal of Case~~ Claim of Appeal**. A defendant's claim of appeal for trial by a judge or before a jury of six persons shall be made in writing, shall comply with the requirements of G.L. c. 218, § 23, and shall specify whether the defendant claims trial by a judge or before a jury. The defendant shall mail a copy of the claim of appeal to the plaintiff. Upon the defendant's filing of a claim of appeal, the clerk shall forthwith note on the docket of the case ~~his~~ the receipt of the claim of appeal, the filing fee for the appeal required by section 23, and any appeal bond required by section 23 or an equivalent cash deposit in lieu thereof. ~~If each of these items has been timely received and the defendant has appealed for trial by a judge, the clerk shall schedule the matter before a judge of that division for trial. If each of these items has been timely received and the defendant has appealed for trial before a jury, the clerk shall~~ If a jury trial is to be held at another division, the clerk shall transmit the original docket entries and the original papers in the case, or an attested copy of the original docket entries and the original papers in the case, to the clerk of the appropriate jury session. The court may waive the filing fee if the applicant is indigent and may waive the bond requirement if it finds that the applicant has insufficient funds to furnish the bond and that the appeal is not frivolous. Prior to the case being tried ~~by a judge in the division from which the case is appealed~~ or transmitted to the jury session at another division, any judge of the division from which the case is appealed may hear and determine any question raised by a party concerning the defendant's compliance with the statutory requirements for appeal. The clerk of the division from which the case is appealed shall retain custody of any appeal bond posted pursuant to section 23 or any equivalent cash deposit in lieu thereof, and shall deposit with the State Treasurer the filing fee and surcharge for the appeal.

If any required item has not been timely received, the clerk shall so notify both parties, shall return any filing fee, surcharge, appeal bond or cash deposit in lieu thereof forwarded by the defendant, and shall note such action, and the reasons therefor, on the docket. The clerk's notice shall inform the defendant that he may have the issue of his compliance with the statutory prerequisites for appeal determined by a judge, upon motion filed within ten days of receiving the notice.

(b) **Conduct of Trials**. Trials by a judge or before a jury shall be conducted in accordance with the provisions of Rule 7, and, in the case of a trial before a jury, in accordance with the provisions of law applicable to jury trials in the Superior Court Department. In a trial before a jury, the judge may direct that any provisions of the Massachusetts Rules of Civil Procedure be utilized, if not inconsistent with Rule 7. A counterclaim or third-party claim may not be raised for the first time on appeal.

(c) **Judgments and Orders to Pay**. Judgment shall be entered forthwith upon the decision of the judge or the verdict of the jury. A judgment for the plaintiff shall be

entered forthwith if the defendant fails to appear for trial or is not prepared to proceed to trial and the plaintiff does appear, or if the defendant withdraws the claim of appeal. Except where justice will not be served thereby, the judge shall, after holding a payment hearing, forthwith order payment to the plaintiff, in accordance with Rule 7(g). Otherwise the judge must schedule a payment hearing in accordance with Rule 7(g) in the division from which the case was appealed. Any order for payment shall grant the party no less than thirty days within which to pay. The clerk shall promptly furnish each party with written notice of the court's judgment, any order for payment, and any payment hearing. When judgment is entered in the jury session, such notice shall be given by the clerk of the jury session.

(d) **Post-judgment Proceedings in Jury Session at Another Division.** When a small claims action has been tried on appeal in the jury session at another division, any post-trial motions filed within ten days after the entry of judgment shall be filed with the clerk of the jury session and heard by the judge who presided over the trial. If justice will be served thereby, the judge may stay, modify, or supersede any order for payment already made.

Unless the judge orders otherwise, upon the expiration of ten days after judgment, the case shall be retransferred to the division from which it was appealed for any further enforcement proceedings pursuant to Rule 7 and Rule 9, except that a case shall not be retransferred until any motion filed, or any appeal claimed, within ten days after entry of judgment has been decided. The clerk of the jury session shall transmit original or attested copies of the judgment, any order for payment, any order deciding a post-trial motion, and any rescript of an appellate court, to the clerk of the division to which the case is being re-transferred.

Any motions which are filed after the case has been re-transferred shall be filed with the clerk of the division to which the claim has been re-transferred. The clerk shall transmit any such motion that affects the judgment to the judge who presided over the trial in the jury session, who may determine such motion, with or without hearing, wherever the judge is then sitting. Other motions that affect only an order for payment or proceedings to enforce the judgment may be heard by any judge or magistrate sitting in the division to which the claim has been re-transferred.

(e) **Appeal from the Housing Court Department to the Appeals Court.** Any claim of appeal from the Housing Court Department to the Appeals Court from the judgment in a small claims action tried by a judge or before a jury shall be filed with the clerk of the division or the jury session where the case was tried within ten days after entry of judgment. If justice will be served thereby, the judge who presided over the trial may stay, modify, or supersede any order for payment already made. Further procedures on appeal shall be governed by the Massachusetts Rules of Appellate Procedure.

Commentary to 2001 Amendments

Most of these amendments are necessary because an appealing party must now elect between trial by a judge and trial before a jury. Jury session procedures are amended to permit the increasingly

frequent practice of sending original case papers to the jury session (while retaining copies at the primary court). The authority granted the Chief Justice of the District Court Department to designate where trials are to be heard in G.L. c. 218, § 23, permits the retention of jury-waived cases in the court where the case originated regardless of whether that court has a jury session. The purpose is to take caseload pressure away from busy jury sessions.

~~Unlike the District Court and Housing Court Departments, the Boston Municipal Court Department of the Trial Court does not consist of separate geographical divisions. Accordingly, all appeals from a small claims session of the Boston Municipal Court are to a jury session of that same court and all papers related to such appeals are processed within the Office of the Clerk of the Boston Municipal Court for Civil Business.~~

In paragraph (a), the reference to the surcharge required by G.L. c. 262, § 4C for new entries “to which a separate docket number is assigned” has been deleted since virtually all courts no longer assign a new docket number when a magistrate’s decision in a small claim is appealed to a judge or a jury.

The deletion in paragraph (b) of the reference to the District/Municipal Courts Rules of Civil Procedure reflects their July 1, 1996 consolidation with the Massachusetts Rules of Civil Procedure.

The limitation in paragraph (e) of appeals to the Appeals Court to those deriving from cases tried by a judge or before a jury in the Housing Court Department reflects the decision of the Supreme Judicial Court in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607, 610 n.9 (2000). There, in a case involving a motion heard initially by a District Court judge, the Supreme Judicial Court stated:

“To the extent that Rule 10(e) of the Uniform Small Claims Rules (1999) provides for an appeal to the Appeals Court from the jury session, it is in conflict with G.L. c. 218, § 23, which provides for the report of questions of law to the appellate division in certain circumstances. General Laws Chapter 211A, § 10 provides for an appeal from the appellate division to the Appeals Court.”

However, there is no appellate division in the Housing Court Department, thereby necessitating, in order to provide for appellate review, an appeal to the Appeals Court from cases heard by a judge or before a jury in the Housing Court Department.